

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0382
Sales and Use Tax
For the Years 2001-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company engaged in the retail sale of home improvement products. Taxpayer was audited for sales tax for the periods in question, and was assessed sales tax with respect to various items that Taxpayer sold. Taxpayer was assessed tax, interest, and penalty on the items.

Initially, Taxpayer protested both the base tax assessment and penalties. A hearing was scheduled for July 13, 2006. In a letter dated July 11, 2006, Taxpayer indicated that it withdrew its previous protest of the base tax assessment, and requested abatement of penalties. On the scheduled date of the hearing, Taxpayer neither called the Department nor appeared at Department offices at the designated time of the hearing. Accordingly, the letter of findings will only address the assessment of penalties against Taxpayer, and further will be based on information contained within the file.

I. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty for the taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has provided sufficient information to establish that it acted with reasonable business care, and accordingly Taxpayer's protest of penalties imposed by the Department is sustained.

FINDING

Taxpayer's protest is sustained.

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